

(2013) 10 KAR CK 0080

In the Karnataka High Court

Case No : Writ Appeal No's. 2953 (LA-KIADB) and 3474 of 2013

Karnataka Industrial Area Development Board

APPELLANT

Vs

A. Abdul Rafeekh and Centurion Software Services Limited

RESPONDENT

Date of Decision : 25-10-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, Order 41 Rule 27(1)
Karnataka Industrial Area Development Act, 1966 — Section 28(1), 28(4), 28(5)
Land Acquisition Act, 1894 — Section 4, 4(1)

Citation : (2014) ILR (Kar) 405 : (2014) 1 KarLJ 303 : (2014) 1 KCCR 436

Hon'ble Judges : D.H. Waghela, C.J.;B.V. Nagarathna, J

Bench : Division Bench

Advocate : S. Vijay Shankar, for Sri Basavaraj Sabarad V, for the Appellant;
Uday Holla, for Holla and Holla, for the Respondent

Judgement

D.H. Waghela, C.J.—The present writ appeals have been filed by Karnataka Industrial Area Development Board (hereinafter referred to as "Board") to assail the order dated 11.12.2012 of learned Single Judge in W.P. Nos. 24701-702/2012, allowing the writ petitions by directing payment of development cost instead of allotment rate in respect of 10 acres land allotted to respondent No. 2 Company. The relevant facts are that respondent No. 1 herein, namely Abdul Rafeekh, was stated to be the owner of lands bearing Sy. Nos. 157/2 and 159 measuring 7 acres 9 guntas and 4 acres 30 guntas respectively, at Hoodi Village, K.R. Puram Hobli, Bangalore East Taluk, which was acquired by the appellant Board for formation of EPIP Industrial Area. Respondent No. 1 herein filed writ petition No. 29271/2001 challenging the acquisition as he intended to set up a software industry of his own, by the company which appears to have been floated on 15.02.2006 under the name and style of "M/s. Centurion Software Services Limited", the respondent No. 2 herein. However, the writ petition was dismissed by order dated 13.11.2006 upholding the acquisition, but with the direction that if respondent No. 1 were to make an application seeking allotment of land for establishment of industry in any other industrial area, the

same shall be considered by the KIADB (Board) in accordance with law.

2. On the other hand, 10 acres of land in Plot No. 40, at Doddanekkundi Industrial Area, 2nd Phase, Whitefield, was allotted by the appellant Board to M/s. Bhorukha Steels Ltd. in the year 1980 for setting up of children's park, hospitals, parking etc., but owing to non-implementation of the project, the land was reclaimed by the appellant Board. In this regard, M/s. Bhorukha Steels Ltd. filed Writ Petition No. 12879/1992, which was dismissed and pursuant to the order dated 29.04.2011 passed by the Hon'ble Supreme Court in C.A No. 3775/2011 in SLP (Civil) No. 15461 of 2010, Plot No. 40 of Doddanekkundi Industrial Area, Whitefield, became available to the appellant Board to be used as industrial area.

3. Respondent No. 1 had identified those 10 acres of land in Plot No. 40, situated at Doddanekkundi Industrial Area, Bangalore South Taluk and made a representation dated 28.04.2007 to the Board for allotment of the same in lieu of the lands acquired from him. Respondent No. 1 claimed that the land was ideally suited for his purpose of establishing his software industry. In W.P. No. 12205/2008 respondent No. 1 sought directions to the Board to consider his representation dated 28.04.2007. The writ petition was disposed of on 09.04.2009 with direction to the KIADB for expeditious consideration of the said representation, in accordance with law.

4. The compensation due for the lands acquired from respondent No. 1 was deposited by the appellant Board before the Civil Court in LAC Nos. 240/2005 and 241/2005. However, respondent No. 1 repeatedly asserted, in his correspondence with the appellant and in writ petitions filed by him that he has not received the compensation amount, and instead, requested for alternative land of 10 acres in Doddanekkundi to be allotted to him at development cost. It appears that respondent No. 1 also approached the State High Level Clearance Committee (SHLCC) seeking approval for the project of respondent No. 2 Company, to establish "IT/ITES office space, residential and common space and other common facilities" at Doddanekkundi Industrial Area, Whitefield Main Road, Bangalore Urban District; and the SHLCC approved the project proposal in its 27th meeting on 13.04.2012 and made recommendations to the Government pursuant to which, Order dated 21.04.2012 bearing No. CI:141:SPI:2012 Bangalore, was passed by the Government of Karnataka, approving the proposal in principle and allotting 10 acres of land in Plot No. 40 at Doddanekkundi Industrial Area, 2nd Phase, Bangalore, subject to availability, and as per norms of the Board. The extent of land required for the project was however to be assessed by Land Audit Committee.

5. Subsequently, respondent No. 2, through respondent No. 1, approached the Board, for allotment of the said 10 acres of land in Plot No. 40 at development cost, which application was placed before the Board on 26.05.2012, wherein it was held that since the plot allotted to respondent No. 2 was not in the same industrial area as that of the lands acquired from respondent No. 1, the

prevailing allotment rate of Rs. 2 crores per acre would be applicable. An allotment letter dated 13.06.2012 was issued to respondent No. 2 to pay Rs. 4 crores, being 20% of the cost, which amount was deposited by respondent No. 1 "under protest", reiterating his claim to allotment of the said lands at development cost.

6. Learned Single Judge has examined the contentions of the parties and opined in the impugned order as under:

5. In the above circumstances, as rightly pointed out by the learned Counsel for the petitioners, the arrangement that has been endorsed by the State High Level Committee and has been followed through by the Board is, in effect, the exchange of land of the first petitioner that was acquired, with the land that is now to be allotted to the second petitioner. Notwithstanding that the respective lands in question are in different industrial areas, the point is as to what is it that first petitioner would have to make good in order to complete this transaction. The cost borne by the Board in developing the acquired land into an industrial area, would have to be borne by the first petitioner, in obtaining allotment of the land in question. If construed otherwise, the result would be that the first petitioner would pay the allotment cost, in which event, the Board could not claim this as an exchange and would necessarily have to pay compensation in respect of the land of the first petitioner that is acquired. This may result in the Board being faced with a larger bill. Then it would be allowing the second petitioner to pay the development cost in consideration of the allotment now proposed. Therefore, it is in the fitness of things and in public interest, if the Board should collect the development cost, without insisting on the allotment rate from the second petitioner and make the allotment forthwith.

7. Learned senior counsel for the appellant Board contended that respondent No. 1 is a shareholder of the present allottee-Company and the company being a different and distinct entity, it was not entitled to allotment of the land in lieu of land acquired from its shareholder. It was contended that respondent No. 2 company was incorporated only in 2006, many years after the acquisition was complete in 1998-1999. Learned counsel relied upon the 11 Judge Bench decision of the Supreme Court in *Rustom Cavasjee Cooper Vs. Union of India (UOI)*, wherein it was *inter alia* held:

13. A company registered under the Companies Act is a legal person, separate and distinct from its individual members. Property of the Company is not the property of the shareholders. A shareholder has merely an interest in the Company arising under its Articles of Association, measured by a sum of money for the purpose of liability, and by a share in the profit. Again, a director of a Company is merely its agent for the purpose of management....

However, learned senior counsel for the respondents contended that no such objection was raised by the appellant Board before the learned Single Judge and consequently, it was not permissible to be raised at the appellate stage. It was

also contended that in allegedly similar cases, the Board had admittedly allotted lands to companies incorporated by erstwhile landowners, hence creating a legitimate expectation borne out of regular practice which could reasonably be expected to continue. Learned counsel relied upon the decisions of the Hon"ble Supreme Court in the following cases with regard to the doctrine of "legitimate expectation":

i. Madras City Wine Merchants" Association and Another Vs. State of T.N. and Another,

ii. M.P. Oil Extraction and Another Vs. State of M.P. and Others, .

8. Respondent No. 1 has repeatedly made it clear to the appellant Board, in his correspondence and even during pendency of W.P. No. 29271/2001 that it was his intention to establish a software industry, on the basis of which this Court directed the appellant Board to allot land for the purpose of establishing such an industry, if an application were made by respondent No. 1. Moreover, the contention that respondent No. 2 was not an allottee in lieu of land acquired from respondent No. 1 was not raised by the appellant Board at an earlier stage. Having regard to the doctrine of legitimate expectation, by its conduct in allotting land in the name of a company incorporated by erstwhile landowners, the appellant Board was estopped from taking the contention that respondent No. 2 is a different entity, according to the submission made on behalf of the respondents herein.

9. The second contention of the appellant Board was that respondent No. 1 was in fact not a "land-loser", as claimed by him, as he had only purchased a substantial portion of the acquired lands, subsequent to preliminary notification dated 24.11.1998 for acquisition of land, u/s 28(1) of the Karnataka Industrial Areas Development Act, 1966 [hereinafter "KIAD Act"] and that, at the most, respondent No. 1 would be entitled to receive compensation for the lands acquired, but he could not be considered a "land owner" to whom alternative land could be allotted. Learned senior counsel relied upon the following decisions of the Hon"ble Supreme Court and this Court wherein it was held that he who purchases land subsequent to notification for acquisition, may be entitled to claim compensation but cannot be said to be owner for the purpose of allotment of alternative land;

i. Union of India (UOI) Vs. Shivkumar Bhargava and Others,

ii. Meera Sahni Vs. Lt. Governor of Delhi and Others,

iii. Poornaprajna House Building Co-operative Society, Bangalore Vs. Bailamma @ Dodda Bailamma and Others,

9.1 Per contra, it was argued for the respondents that the language of section 28(1) of the KIAD Act was different from section 4 of the Land Acquisition Act, 1894 and that there was no bar on transfer of lands prior to the final notification u/s 28(4) of the KIAD Act, thereby making the respondent No. 1 a "land owner"

at the time of final notification. Learned counsel however fairly conceded that respondent No. 1 could not successfully challenge the acquisition of lands, but contended that he was certainly a landowner as referred to by the appellant Board itself in intimation letter dated 13.06.2012 and allotment letter dated 28.06.2012 as also the Resolution of the Board Meeting dated 26.06.2012 and hence the appellant Board was estopped from claiming that respondent No. 1 was not a "land loser".

9.2 It may be pertinent to note here that in WP No. 29271/2001, this Court has held that respondent No. 1 is indeed disentitled from seeking relief, as a substantial part of the lands acquired from him was purchased subsequent to issuance of preliminary notification. However, the order in WP No. 29271/2001 directed the appellant Board to consider allotment of land to respondent No. 1 in any other industrial area, in accordance with law. Thereafter, respondent No. 1 approached the State High Level Clearance Committee, whose recommendations and subsequent Government Order dated 21.04.2012, acknowledged the earlier acquisition of the lands of respondent No. 1 and subsequent allotment to establish his software industry.

9.3 The Apex Court has held in Shivkumar Bhargava (supra) that the policy of the Government, relevant in that case, indicated that the person whose land was acquired meant the owner as on date, the notification was notified for acquisition and he alone would be entitled to allotment of alternative site. A person who purchased land subsequent to the notification may be entitled to claim compensation, but he cannot be said to be the owner for allotment since the right of ownership would be determined with reference to the date of publication of notification u/s 4(1) of the Land Acquisition Act, 1894.

In Meera Sahni (supra) the Apex Court observed that, it is by now well settled law that under the Land Acquisition Act, the subsequent purchaser cannot challenge the acquisition proceedings and that he would be only entitled to get the compensation.

The Full Bench of this Court in Poorna Prajna House Building Co-operative Society (supra) has also held that a person who purchases the land subsequent to issuance of notification u/s 4(1) of the Land Acquisition Act, 1894 cannot be said to be the owner, although he is entitled to claim compensation by virtue of sale made in his favour.

In the facts of the present case, although the preliminary notification u/s 28(1) was issued on 24.11.1998 and final notification u/s 28(4) was issued on 12.08.1999, respondent No. 1 had purchased substantial portion of land on 29.05.1999 and though his challenge to the acquisition was spurned by this Court, he could legally claim compensation, but by virtue of the provisions of section 28(5) of the KIAD Act, the land vested absolutely in the State Government, free from all encumbrances and there could be no further obligation except the payment of compensation.

10. The third contention for the appellant Board was that the land allotted to respondent No. 2 was in a different industrial area from the lands acquired from respondent No. 1, and hence the question of making allotment at development cost did not arise at all. Doddanekkundi Industrial Area was claimed to have been formed in 1980 i.e., at least two decades before acquisition of the lands belonging to respondent No. 1. Hence the appellant Board asserted that respondent No. 1 had no right to seek allotment in an Industrial Area developed many years prior to acquisition of his lands and that his insistence on paying development cost only was unsustainable and ill-founded. It was also pointed out that the compensation in respect of the acquired lands had been made available in the year 2005 to respondent No. 1 who deliberately and consciously chose not to receive the amount and instead, unilaterally insisted on paying only development cost for the land allotted as late as in the year 2012.

11. Learned senior counsel for the respondents vehemently argued at length, without any firm legal basis, that as respondent No. 1 had not received compensation for the acquired lands, he deserved to be allotted alternative land, albeit in a different industrial area, at development cost. It was urged that it was the policy of the appellant Board since 1988 to charge development cost on allotted land against waiver of compensation for acquired lands, and even sought to give examples of such transactions on various occasions. It was in this context that the respondents filed I.A. No. III/2013 so as to produce additional documents of alleged subsequent events to help discern the policy of the appellant Board with regard to charging of only development cost. He relied upon decision of the Hon'ble Supreme Court in Wadi Vs. Amilal and Others, , wherein Order 41 Rule 27 of the Code of Civil Procedure, 1908, was interpreted as under:

7. Now it is clear that Rule 27 deals with the production of evidence in the appellate-Court. The general principle incorporated in sub-rule (1) is that the parties to an appeal are not entitled to produce additional evidence (oral or documentary) in the appellate Court to cure a lacuna or fill up a gap in a case. The exceptions to that principle are enumerated thereunder in clauses (a), (a) and (b) (sic). We are concerned here with clause (b) which is enabling provision. It says that if the appellate-Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, it may allow such document to be produced or witness to be examined. The requirement or need is that of the appellate Court bearing in mind that the interest of justice is paramount. If it feels that pronouncing a judgment in the absence of such evidence would result in a defective decision and to pronounce an effective judgment admission of such evidence is necessary, clause (b) enables it to adopt that course. Invocation of clause (b) does not depend upon the vigilance or negligence of the parties for it is not meant for them. It is for the appellant to resort to it when on a consideration of material on record it feels that admission of additional evidence is necessary to pronounce a satisfactory judgment in the case.

11.1 Learned counsel for the respondent relied upon judgment of the Hon''ble Supreme Court in *Pasupuleti Venkateswarlu Vs. The Motor and General Traders*, , to submit that if a fact, arising after the lis has come to court which has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. He also relied upon observation of Varadachariar, J. in the decision of the Apex Court in AIR 1941 5 (Federal Court) , that on the theory of an appeal being in the nature of a rehearing, the courts have in numerous cases recognised that, in moulding the relief to be granted in a case on appeal, the court of appeal is entitled to take into account even facts and events which have come into existence after the decree appealed against.

11.2 Learned counsel for the respondents also relied upon decision of the Apex Court in *B.R. Ramabhadriah Vs. Secretary, Food and Agriculture Department, Andhra Pradesh and others*, , which allows this Court to suitably mould the relief in view of changed circumstances, to mete out justice. Learned counsel for the appellant Board submitted that this case did not squarely address the issue at hand and hence has no relevance or application in the facts of the present case.

12. Considering the above contentions, there appears no occasion for invoking the exception clause (a), (aa) or clause (b) of Order 41 Rule 27(1) of the CPC and there is no reason to allow I.A. No. III/2013 for production of additional documents. The additional documents sought to be introduced are claimed to be indicative of the policy followed by the appellant Board subsequent to filing of this writ appeal. It was fairly conceded by learned counsel for the respondents that a "policy" could be discerned from the Resolution dated 04.04.1998 itself or prior application thereof. Hence subsequent events, even if indicative of a policy or deviation from the norms, will have no bearing on the proceedings at hand. Thus, additional evidence sought to be introduced as well as the contention that subsequent events ought to be taken into account, are untenable and has to be disregarded. The interim application No. III/2013 is, therefore, rejected.

13. Learned senior counsel for the respondents also relied upon the alleged policy of the appellant Board to charge only development cost in respect of allotted land, on the basis of right to equality enshrined in Article 14 of the Constitution. Learned counsel relied upon the principles laid down by the Hon''ble Supreme Court in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, ; and subsequently referred in *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, wherein it is held at para 15 that where granting of largesse is concerned, the Government cannot act arbitrarily at its sweet will and that its actions must be in conformity with some standard or norm which is not arbitrary, irrational or irrelevant. Reliance was also placed on the decision in *Hari Ram and Another Vs. State of Haryana and Others*, where the Hon''ble Supreme Court has held:

43. It is unfair on the part of the State Government in not considering representations of the appellants by applying the same standards which were applied to other landowners while withdrawing from acquisition of their land under the same acquisition proceedings. If this Court does not correct the wrong action of the State Government, it may leave citizens with the belief that what counts for the citizens is right contacts with right persons in the State Government and that judicial proceedings are not efficacious. The action of the State Government in treating the present appellants differently although they are situated similar to the landowners whose lands have been released can not be countenanced and has to be declared bad in law.

14. Learned counsel for the appellant Board contended that there was no arbitrary exercise of power or violation of Article 14 in charging allotment rate as opposed to development cost. As for the alleged similar circumstances wherein the Board is alleged to have charged only development cost against waiver of compensation, the industrial areas where lands were allotted, were formed subsequent to the acquisition of lands and not 20 years prior to it, as in the present case. It was contended that charging only development cost on the allotted land would be detrimental to the Government and, relying upon the case of *Kasturi Lal (supra)*, it was pointed out that in para 14 of the judgment, the Hon"ble Supreme Court has observed that the Government cannot sell or lease-out its property for a consideration less than the highest that can be obtained for it, unless of course there are other considerations which render it reasonable and in public interest to do so.

15. Having regard to the facts and contentions summarized hereinabove, it needs to be noted that allotment of land in Plot No. 40 to respondent No. 2 was pursuant to its representation dated 28.04.2007 and application 25.04.2012 and resolution of the Board at its meeting held on 26.05.2012, at a tentative price of Rs. 2 crores per acre. Such allotment was vide allotment letter dated 28.06.2012 and after consideration of request of respondent No. 2 to collect only development charges on the ground that the respondents will not claim any compensation in respect of the lands in Sy. Nos. 157 and 159 of Hoodi village which were acquired by the Board during the year 1999. After consideration of that request and detailed discussion thereon it was resolved on 26.05.2012 by the Board that respondent No. 2 may be intimated to pay the prevailing tentative allotment rate for the land allotted in Plot No. 40 of Doddanekkundi Industrial Area. Thereafter, respondent No. 2 has also made the initial payment of Rs. 4 crores for issue of allotment letter in favour of respondent No. 2. Therefore, the only link, between earlier transaction of acquisition of land in Sy. Nos. 157 and 159 in the year 1999 and the allotment of land in June 2012 pursuant to a fresh application, was the direction of this Court in W.P. No. 29271/2001 for consideration of application of the respondent No. 1 for allotment of land in any other industrial area; and apparently no right was vested in respondent No. 1 to claim allotment of land in any other industrial area on conditions suitable to the respondents. The only legal basis sought to be made out in the petition of the

respondents was reference to resolution dated 04.04.1998 of the Board, which was annexed at Annexure-N to the petition. That resolution mentioned in its preface that a number of representations were being received from the land owners for re-conveyance of land and the Chairman had desired that suitable policy decision had to be taken in the matter so that land owners who propose to set up their own projects are supported. It was then resolved as under:

After detailed discussion, it was resolved that in supersession of the decision taken in the meetings held on 8th March 1996 and 2nd April 1997, the following guide-lines be adopted with immediate effect.

The erstwhile land owners desirous of setting up industrial units, be allotted lands in Industrial Areas, where their lands are acquired, subject to the following conditions:

- a) The allotment shall be on lease-cum-sale basis only.
- b) The landowners should pay 100% pro-rata cost of development applicable for the area, excluding interest/statutory charges and other levies.
- c) The land owners should adhere to the terms and conditions of allotment and implement the projects within the stipulated time.
- d) No land shall be allotted in Industrial Areas on exchange basis.

No other resolution or policy decision of the Board is cited on behalf of the respondents in support of their claim and it is clear from bare reading of the above resolution relied upon by the respondents herein that they were not legally entitled to allotment of land in a different industrial area on payment of development cost only.

16. According to the statutory scheme of the KIAD Act a preliminary notification u/s 28 thereof has to be issued for giving notice of the intention to acquire land. After opportunity of being heard to the owners, occupiers, or persons interested in the land, a declaration has to be made by notification in the official gazette u/s 28(4) of the Act. Under sub-section (5) of section 28, on publication in the official gazette of the declaration under sub-section (4), the land shall vest absolutely in the State Government free from all encumbrances. As for the distinct and separate issue of payment of compensation for the land which is acquired, provisions are made in section 29 of the KIAD Act. According to sub-section (2) of section 29, where the amount of compensation has been determined by agreement between the State Government and the persons to be compensated, it has to be paid in accordance with such agreement. Obviously, when compensation could be determined by agreement, the terms of such agreement may be negotiated by the parties, having regard to the facts of each case and may include, in consideration of the terms, the offers of alternative land, land in lieu of compensation, likelihood of litigation, delay, development costs, etc. There could be a policy and guidelines for the Board to follow in such cases, but there cannot be slide rules, fixed formula or precedent in such cases

of negotiated agreement. In the facts of the present case, admittedly there was no agreement for waiving the compensation in lieu of alternative land, and an "agreement" cannot be imposed upon either party on the basis of a precedent.

17. In view of the above facts and relevant statutory provisions, the respondents did not have any legal right to claim allotment of land on payment of development cost instead of allotment rate and the earlier acquisition of land of respondent No. 1 or non-acceptance of compensation by him on his own volition could not create a legal right or even a legitimate expectation of allotment of land in his chosen industrial area at development cost.

17.1 As held by the Apex Court in Madras City Wine Merchants Association (supra) legitimate expectation may arise only if there is an express promise given by a public authority or because of the existence of a regular practice which the claimant can reasonably expect to continue and such an expectation is reasonable. If there is a change in policy or in public interest, the position is altered by a rule or legislation, no question of legitimate expectation would arise.

17.2 The judgment in M.P. Oil Extraction (supra) does not apply in the facts of the present case in view of the fact that the resolution dated 04.04.1998 referred to hereinabove and relied upon by the respondents clearly excluded the claim of the respondents. Any deviation from the policy adopted by the said resolution may be legal or otherwise in a specific case, but such deviation cannot be the basis of legitimate expectation or take the form of an express promise or regular practice expected to be continued.

18. Even assuming that the Board had not agitated the issue of separate identity of respondent Nos. 1 and 2 and had considered the earlier acquisition of land for the purpose of allocation of land in Plot No. 40, pursuant to a fresh application therefor, there was still no basis for allotment of land at development cost. It therefore appears that only on the basis of a direction of this Court in order dated 13.11.2006 in W.P. No. 29271/2001, when even an application was not made by the respondents for allotment of land, that the respondents insisted upon allotment of land at development cost. Having regard to the passage of time between earlier acquisition of land of respondent No. 1 and the allotment of land in a different area to respondent No. 2, it appears to be perverse and illogical to conclude that "it is in the fitness of things and in public interest if the Board should collect the development cost, without insisting on the allotment rate" as held in the impugned order. In the facts and for the reasons discussed herein above, the appeal is allowed and the impugned order dated 11.12.2012 of learned single Judge in W.P. No. 24701-702 of 2012 is set aside. However, in view of the fact that the impugned direction allowed time of eight weeks for compliance of the order and respondents stand to lose the land allotted to them with forfeiture of the amount already paid in terms of the allotment letter dated 28.06.2012, it is directed that the respondents shall be permitted to pay within one month from the date of this order, the remaining amounts due under the allotment letter; and the respondents shall also be required to abide by the other

conditions contained in the allotment letter. In the facts and circumstances of the case, there is no order as to costs. Order accordingly.